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| 09/800,690      | 03/07/2001  | Li-Lung Chao         | YOR920010128US1/I27-0007 | 5054             |

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Philmore H. Colburn II  
Cantor Colburn LLP  
55 Griffin Road South  
Bloomfield, CT 06002

EXAMINER

FADOK, MARK A

ART UNIT PAPER NUMBER

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**GROUP 3600**

**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 09/800,690  
Filing Date: March 07, 2001  
Appellant(s): CHAO ET AL.

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Marisa J. Dubuc  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed May 10, 2005.

**(1) *Real Party in Interest***

A statement identifying the real party in interest is contained in the brief.

**(2) *Related Appeals and Interferences***

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

**(3) *Status of Claims***

The statement of the status of the claims contained in the brief is correct.

**(4) *Status of Amendments After Final***

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

**(5) *Summary of Invention***

The summary of invention contained in the brief is correct.

**(6) *Issues***

The appellant's statement of the issues in the brief is correct.

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**(7) Claims Appealed**

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(8) Prior Art of Record**

|             |               |        |
|-------------|---------------|--------|
| 20020007318 | Alnwick       | 1/2002 |
| 6,728,685   | Ahluwalia     | 4-2004 |
| 20020107794 | Furphy et al. | 8-2002 |

Pritchard, Timothy, Ford and Toyota test the sale of cars online in Canada, New York Times, June 29, 2000.

**(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1,3-21 are unpatentable under 35 U.S.C. 103. This rejection is set forth in a prior Office Action, mailed on 11/08/2004.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claims 1-21 are not patentable under 35 U.S.C. 103(a) over Alnwick (US 2002/0007318) in view of Ahluwalia (6,728,685) in view of Pritchard in view of Furphy (2002/0107794).**

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In regards to claim 1, Alnwick discloses a system for back ordering out of stock products, the system comprising:

- a user system coupled to said network (FIG 1, item 3); and
- said user system accessing said host system via said network (FIG 1).
- a host system for receiving an order for a product from a user (FIG 1),
- determining whether inventory for said product satisfies said order (abstract, particular component in stock?),
- notifying said user if said inventory for said product does not satisfy said order (page 4, line 56),

**Alnwick** teaches searching for a product and determining if available quantities are in stock (para 56), placing an order for a back ordered quantity that was not available from the current stock (para 76), updating inventory amounts (para 76), having a vendor approve the order (para 86) and tracking status (para 86), but does not specifically mention that the inventory is updated after the back ordered product is received and that the customer is notified. **Ahuluwalia** teaches updating inventory on a regular basis (**Ahuluwalia**, col 11, lines 11-60), and notifying the customer that the item has been received (**Ahuluwalia**, col 10, lines 20-37). It would have been obvious to a person having ordinary skill in the art to include in **Alnwick**, updating the inventory and notifying the customer of the status, because in cases where time is of the essence, such information may be used to notify a customer that the configured product is not readily available. A new order can therefore be placed or a preexisting one updated without the customer having to cancel a previously submitted order (**Ahuluwalia**, col 2, lines 35-60).

The combination of **Alnwick** and **Ahuluwalia** teach notifying a user of the product availability status (see above) but does not specifically mention that there is a response to the status update and an authorization to deliver the product. **Pritchard** teaches a customer being notified of the arrival of a back ordered product and authorizing the delivery by obtaining a customer signature (page 2, para 11). This type of notification is notoriously well known in the automobile sales industry, where customers are notified that their back ordered car has arrived. The dealer is obviously motivated to make the call since delivering the car quickly will save money by disposing of the inventory as soon as possible. It was further notoriously well known that the customer could cancel the order at any time as is taught by **Ahluwalia** (col 35-45). It would have been obvious to a person having ordinary skill in the art to include in the combination of **Alnwick** and **Ahluwalia**, notifying the customer and getting authorization to ship, because the customer may no longer need the product due to the late arrival of the product, which caused the customer to purchase the product elsewhere (**Ahluwalia** col 2, lines 17-23). This notification and approval when done in a timely fashion will permit the product to be immediately placed back in the available inventory so that another customer may purchase the product, thus reducing the amount of time that the inventory is held by the supplier.

The combination of **Alnwick** and **Ahluwalia** teach placing an order for a back ordered quantity that was not available from the current stock (**Alnwick**, para 76), but

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does not specifically mention that a time period is placed by the user on the back ordered items from a supplier. **Furphy** teaches a back order time period designated by a customer (Para 65). It would have been obvious to a person having ordinary skill in the art to include in **Alnwick** having the capability to allow the customer to cancel an order if the product was not available on a certain date, because this would free both the customer and the supplier from the contract and allow the customer to pursue other suppliers to attain potentially critical parts.

- a network coupled to said host system (page 6, para 86); and
- a database coupled to said host system for storing data relating to said back ordering out of stock products (page 7, para 94).

**In regards to claim 3**, Alnwick teaches wherein said acquiring said amount and updating said inventory includes said host system:

- requesting said amount from a supplier; and
- receiving a request from said supplier to add said amount to said inventory (see response to claim 1).

**In regards to claim 4**, Alnwick teaches placing a time limit on an active quote in which after that time the quote expires (para 93) and placing a back order (see response to claims 1-3).

**In regards to claim 5**, Alnwick teaches notifying said user that said back order request will remain on hold for a predetermined time (para 93);

- determining whether said predetermined time has expired; and
- deleting said back order request if said predetermined time has expired (see response to claim 4 above).

**In regards to claim 6**, Alnwick teaches wherein said delivery request includes said host system:

- sending a back order confirmation request to said user;
- receiving a back order confirmation; and
- reducing said inventory data to reflect said back order confirmation (see response to claims 1-5 above).

**In regards to claims 7 through 21**, these claims and their features are considered parallel claims to claims 1-7 and are rejected to the same reasons as claims 1-7 above.

## **(10) Response to Argument**

### **Paragraph 1 and 2:**

Appellants argue that Alnwick does not teach a host system executing back order functions between users and suppliers. This particular feature could not be found directly, however, the examiner believes that the appellants are suggesting that Alnwick is a system that has a customer to supplier direct link and that there is no third party intervention. The examiner disagrees with this premise and directs the appellants' attention to page 4, para 51-57, where a search function is provided for a plurality of manufacturers (suppliers) at the host website and where availability is provided to the user of the products being sought (0056). Furthermore, it is clear that back ordering functions are being handled by the website administrator as is seen in para 0076 and 0104 (Global exchange module).

**Paragraph 3:**

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). In this case appellants argues that Ahluwalia does not teach "determining an amount of said product for meeting said back order request; acquiring said amount and updating said inventory, notifying said user system that said back order request has been satisfied", because Ahluwalia does not teach these methods in regards to back ordering. The examiner notes that the function of back ordering is clearly taught by

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Alnwick and that the reference teachings of Ahluwalia are cited to teach that updating inventories and notifying buyers of the arrival of their order is well known in the art.

**Paragraph 4:**

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). In this case appellants argues that Furphy teaches a time limit on something other than a back orders and therefore does not cure the deficiencies in the combination of Alnwick and Ahluwalia. Once again the teachings of Alnwick and Ahluwalia teach the back ordering function of the instant claims and Furphy was introduced to show that placing time limits on orders was old and well known in the art.

**Paragraph 5:**

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). In this case appellant argues that Pritchard does not teach a response to a status update and an authorization to deliver a product. The appellants contend that this is not taught by Pritchard since the notification in claim 1 occurs between the host



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system and the user. The combination of Alnwick and Ahuwalia teach the back ordering and notification by email that the order has been back ordered. Pritchard was introduced to show that notifying a customer when their products are available was old and well known in the art and would have been well within the skill of an artisan at the time of the invention to incorporate this feature into Alnwick.

In response to applicant's argument that Aluwalia, Furphy and Pritchard are nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, all the reference are involved in electronic commerce and the effective sale of products..

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,



Mark Fadok  
Primary Examiner  
July 7, 2005

Conferees:



Wynn Coggins  
Supervisory Patent Examiner  
Art Unit 3625



John Weiss  
Appeals Conference Specialist  
Art Unit 3629

7-12-05

Philmore H. Colburn II  
Cantor Colburn LLP  
55 Griffin Road South  
Bloomfield, CT 06002